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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

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11 N.D., et al.,

12 Plaintiffs,

13 v.

14 CHRIS REYKDAL, et al.,

15 Defendants.

CASE NO. 2:22-cv-01621-LK

ORDER REQUESTING
SUPPLEMENTAL BRIEFING AND
RESPONSE TO MOTION FOR
RECONSIDERATION

16 This matter comes before the Court on Plaintiffs' Motion for Reconsideration, Dkt. No. 60,
17 of the Court's Order denying their motion for provisional class certification and a preliminary
18 injunction, Dkt. No. 58 (the "Order"). Before they filed their motion for reconsideration, Plaintiffs
19 filed a Notice of Appeal of the Order. Dkt. No. 59.

20 Plaintiffs have not provided a basis for this Court's authority to entertain their motion
21 following their Notice of Appeal. A notice of appeal generally "confers jurisdiction on the court
22 of appeals and divests the district court of its control over those aspects of the case involved in the
23 appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam); *see*
24 *also Paige v. State of Cal.*, 102 F.3d 1035, 1039 (9th Cir. 1996) (the Ninth Circuit's jurisdiction

1 under 28 U.S.C. § 1292(a)(1), which permits appeals from orders regarding preliminary
2 injunctions, “extends only to the matters inextricably bound up with the injunctive order from
3 which the appeal is taken.” (cleaned up)). And although Federal Rule of Civil Procedure 62(d)
4 permits a district court to “suspend, modify, restore, or grant an injunction on terms for bond or
5 other terms that secure the opposing party’s rights” pending appeal from an interlocutory order
6 that refuses an injunction, “[i]t does not restore jurisdiction to the district court to adjudicate anew
7 the merits of the case after either party has invoked its right of appeal and jurisdiction has passed
8 to an appellate court.” *McClatchy Newspapers v. Cent. Valley Typographical Union No. 46, Int’l*
9 *Typographical Union*, 686 F.2d 731, 734–35 (9th Cir. 1982), *amended sub nom. McClatchy*
10 *Newspaper v. Local 46* (9th Cir. Sept. 22, 1982). Rather, the district court’s “jurisdiction over the
11 matters appealed . . . is limited to preserving the status quo.” *E.E.O.C. v. Townley Eng’g & Mfg.*
12 *Co.*, 859 F.2d 610, 621 n.18 (9th Cir. 1988); *see also Nat. Res. Def. Council, Inc. v. Sw. Marine*
13 *Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) (any action taken pursuant to the Rule “may not
14 materially alter the status of the case on appeal” (cleaned up)).

15 Plaintiffs’ Motion for Reconsideration addresses the same issues that are the subject of
16 their appeal, including the merits of the Order and Plaintiffs’ entitlement to a preliminary
17 injunction. Dkt. No. 59 (appealing the Order); *see generally* Dkt. No. 60 (seeking reconsideration
18 of the Order). And it does not appear that Plaintiffs are merely seeking to maintain the status quo
19 pending the appeal because they are asking the Court to “enter a preliminary injunction requiring
20 all proposed provisional class members to be reinstated immediately to special education
21 placements from which they were exited on August 31.” Dkt. No. 60 at 4; *see also McClatchy*
22 *Newspaper*, 686 F.2d at 735 (finding that a district court’s amended judgment “did not fall within
23 the authority” of Rule 62 because it “required a change from the status quo” by ordering the
24 publisher to reinstate employees who were not working when the appeal was filed); *Marcus I. ex*

1 *rel. Karen I. v. Dep't of Educ.*, No. 10-00381 SOM/BMK, 2012 WL 3686188, at *4 (D. Haw. Aug.
 2 24, 2012). For these reasons, it appears that Plaintiffs' motion is subject to Federal Rule of Civil
 3 Procedure 62.1, which provides that "[i]f a timely motion is made for relief that the court lacks
 4 authority to grant because of an appeal that has been docketed and is pending," the district court
 5 may "(1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant
 6 the motion if the court of appeals remands for that purpose or that the motion raises a substantial
 7 issue." *See also Mendia v. Garcia*, 874 F.3d 1118, 1121 (9th Cir. 2017) (explaining that Rule 62.1
 8 "allows a party to ask the district court for an 'indicative ruling' on an issue the court is without
 9 jurisdiction to decide because of a pending appeal.").

10 The Advisory Committee Notes accompanying this Rule state that "[o]ften it will be wise
 11 for the district court to determine whether it in fact would grant the motion if the court of appeals
 12 remands for that purpose." In order to make such determination, the Court requests that Defendants
 13 file a response of no more than 2,100 words to Plaintiffs' motion by September 15, 2023.

14 To the extent there exists another basis for this Court's authority to entertain Plaintiffs'
 15 motion, Plaintiffs must provide supplemental briefing addressing such authority by September 13,
 16 2023. Such brief may not exceed 700 words.

17 Dated this 8th day of September, 2023.

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Lauren King
 20 United States District Judge